ROY G. BARTON, JR.

IBLA 72-318 Decided January 12, 1973

Appeal from a decision by the New Mexico State Office, Bureau of Land Management, rejecting an oil and gas lease offer.

Affirmed.

Acquired Lands--Mineral Leasing Act for Acquired Lands: Lands Subject to--National Park Service Areas: Land: Use--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Lands Subject to

A noncompetitive oil and gas lease offer for acquired land in a national park is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes such lands from its terms.

APPEARANCES: Roy G. Barton, Jr., pro se.

OPINION BY MR. RITVO

Roy G. Barton, Jr. has appealed to the Secretary of the Interior from a decision dated February 28, 1972, by the New Mexico State Office, Bureau of Land Management, rejecting a noncompetitive acquired lands oil and gas lease offer for lands within Carlsbad Caverns National Park for the reasons that the lands were withdrawn from mineral leasing and are under the jurisdiction of the National Park Service.

The application, filed on September 27, 1971, described 79.87 acres located in section 23, T. 25 S., R. 24 E., N.M.P., Eddy County, New Mexico. The lands are acquired lands which were made a part of the Carlsbad Caverns National Park by the Act of December 30, 1947, 16 U.S.C. § 407 (1970). Barton filed his application pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), which authorizes the Secretary to issue leases for certain mineral deposits in acquired lands of the United States. Section 3 of the Act, 30 U.S.C. § 352, specifically excludes lands within national parks from its provisions. The exclusion is repeated in the pertinent regulation, 43 CFR 3101.2. An application filed under the Act for lands not subject to it must be rejected. Elgin A. McKenna, 74 I.D. 133, 137 (1967), aff'd, McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1970).

While Barton does not deny these points on which the State Office relied, his statement of reasons on appeal urges:

> 1. The lands therein described are owned by the United States and not presently under oil and gas lease.
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> 2. The said lands are not within a Known Geological Structure, are wildcat acreage, and available to be leased under the Non-competitive Oil and Gas Lease regulations of the Department of the Interior.
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> 3. That although said lands are within the jurisdiction of the National Park Service, they are not scenic, or are used as part of any National Park Project.
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> 4. That the appellant, and other co-tenants, are the owners of the oil and gas rights in fee simple upon the lands which surround these lands, and that it will be impossible to develop the land of the appellant without affecting the interest of the United States.
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> 5. That appellant would be willing to enter into a stipulation in the proposed lease from the United States that no actual drilling will be conducted on any of the lands covered thereby during the term of the lease; but the lease will be merely unitized with lands belonging to the appellant which offset the lands to the United States; therefore, no possible damage would be done to the lands supervised by the National Park Service.

These contentions are not persuasive. That the lands are not presently under an oil and gas lease or that the lands are not within a known geologic structure are irrelevant when the lands are located in a national park. Similarly, the appellant's contentions that the park lands are not classified as scenic or are not part of a national park project are immaterial under the circumstances. That the lands applied for may be affected by drilling on adjacent land does not enlarge the Secretary's authority under the Mineral Leasing Act for Acquired Lands. Therefore, appellant's offer must be rejected. We note, however, if the interests of the United States in oil and gas deposits are endangered, the Secretary may take protective measures in the exercise of his implied authority. Solicitor's Opinion, 60 I.D. 201 (1948).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

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Martin Ritvo, Member

We concur:

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Douglas E. Henriques, Member

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Joan B. Thompson, Member